

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

W. LYNN McCLORE,

No. C 07-3251 WHA (PR)

Petitioner,

**DENIAL OF LEAVE TO PROCEED  
IN FORMA PAUPERIS; ORDER TO  
SHOW CAUSE**

v.

MARGARITA PEREZ, Director, and  
B. CURRY, Warden,

Respondents.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He also requests leave to proceed in forma pauperis.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. *See* 28 U.S.C. § 2241(d) (venue proper in both district of conviction and district of confinement).

**STATEMENT**

In 1987 a jury convicted petitioner of kidnaping and robbery. He received a sentence of seven years to life plus one year in prison. He alleges that he has exhausted these parole claims by way of state habeas petitions.

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**DISCUSSION***A. Standard of Review*

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). A petition must "specify all the grounds for relief" and set forth "facts supporting each of the grounds thus specified." 28 U.S.C. § 2254 Rule 2(c). A district court shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." 28 U.S.C. § 2243.

*B. Legal Claims*

On September 12, 2005, petitioner was denied parole for the ninth time. As grounds for federal habeas relief, petitioner asserts that the denial was not supported by "some evidence having an indicia of reliability," as required by due process. This claim is sufficient to require a response. *See McQuillion v. Duncan*, 306 F.3d 895, 904 (9th Cir. 2002).

**CONCLUSION**

1. In view of petitioner's income and account balance, leave to proceed in forma pauperis (document number 2 on the docket) is **DENIED**. He must pay the five dollar (\$5) filing fee within thirty days or this case will be dismissed.

2. The clerk shall mail a copy of this order and the petition with all attachments to the respondent and the respondent's attorney, the Attorney General of the State of California. The clerk shall also serve a copy of this order on the petitioner.

3. Respondent shall file with the court and serve on petitioner, within sixty days of service of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all portions of the state trial record that have been transcribed previously and that are relevant to a determination of the

1 issues presented by the petition.

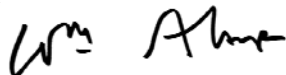
2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the  
3 court and serving it on respondent within thirty days of service of the answer.

4 4. Respondent may file a motion to dismiss on procedural grounds in lieu of an answer,  
5 as set forth in Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a  
6 motion, petitioner shall file with the court and serve on respondent an opposition or statement of  
7 non-opposition within thirty days of receipt of the motion, and respondent shall file with the  
8 court and serve on petitioner a reply within 15 days of receipt of any opposition.

9 5. Petitioner is reminded that all communications with the court must be served on  
10 respondent by mailing a copy of the document to respondent's counsel. Papers intended to be  
11 filed in this case should be addressed to the clerk rather than to the undersigned. Petitioner also  
12 must keep the court informed of any change of address by filing a separate paper with the clerk  
13 headed "Notice of Change of Address," and comply with any orders of the court within the time  
14 allowed, or ask for an extension of that time. Failure to do so may result in the dismissal of this  
15 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). *See Martinez*  
16 *v. Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

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18 **IT IS SO ORDERED.**

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20 Dated: June 27, 2007.

  
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WILLIAM ALSUP  
UNITED STATES DISTRICT JUDGE

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